IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3752 OF 2007

Shri Shivaji Narayan Dhatrak ..Petitioner.
Vs.
Ayub Nur Mohammed Sayyed & Ors. ..Respondents.

Mr.M.M.Sathaye, adv. for the Petitioner.

CORAM : J.H.BHATIA, J.
DATE : AUGUST 17, 2007.

P.C.

1. Heard the learned counsel for the Parties.

2. The respondent nos.1 to 3, who are original plaintiffs, had entered into an agreement for purchase of certain properties from the respondent nos.4,5 and 6, who are the original defendant nos.1 to 3. The present petitioner is the defendant no.4 in the suit. The present petitioner, allegedly on the basis of power of attorney executed by the plaintiffs in his favour, executed a document whereby the agreement for sale came to be cancelled and as a result, the plaintiffs were deprived of getting sale deed executed in their favour. Plaintiffs filed a suit seeking declaration that the alleged power of attorney in favour of the present petitioner was forged and not binding on them and that the cancellation deed executed by the present petitioner in favour of the respondent nos.4 to 6 is

also not binding on them. In the plaint, the plaintiffs had contended that they had made payment of Rs.3,50,000/- to the defendant nos.1 to 3. The defendant nos.1 to 3 nowhere pleaded that the amount was received by the defendant no.4 , i.e., the present petitioner and, therefore, the petitioner had also not pleaded anything about payment. It appears that during the evidence before the Court, the defendant no.1 admitted that the payment was received by the present petitioner. After that the present petitioner/defendant no.4 wanted to make amendment to the written statement only to state that he had not received the amount. That application came to be rejected by the learned trial Court observing that the stand taken by the defendant nos.1 to 3 and by the defendant no.4 is different. In such circumstances, the defendant no.4 can very well cross-examine the witness if any statement has gone adverse to him, looking to the pleadings in the written statement.

3. Merely because one of the defendants made an admission adverse to the present petitioner, and that too without pleadings it is not necessary to make amendment to the written statement to deny the receipt of the amount, which was never pleaded by the other side. His purpose can be served only by effective cross-examintion of the concerned witness for the

defendant nos.1 to 3. In such circumstances, I find no fault with the impugned order passed by the trial Court. In my opinion, purpose will be served if the liberty is granted to the petitioner to recall the concerned witnesses for further cross-examination.

4. In the result, petition stands dismissed. However, the petitioner/defendant no.4 shall be at liberty to recall the concerned witnesses examined on behalf of the plaintiff or the defendant nos.1 to 3 for further cross-examination.

5. Petition stands disposed off accordingly.

[J.H.BHATIA, J.]